APPEAL NO. 042167
FILED OCTOBER 4, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on July 29, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on (incorrect date of injury), and that because he did not sustain a compensable injury, the claimant did not have disability. The claimant appealed, arguing that the hearing officer's determination is against the great weight and preponderance of the evidence. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed, as reformed.

The facts of this case are undisputed. The claimant, a truck driver, came upon a truck that had skidded off the road and onto the median. The claimant stopped his truck on the shoulder of the highway, he crossed the road to render aid to the driver; however, the driver appeared to be unharmed. Then the claimant attempted to return to his truck by crossing the road, and a truck struck him. The claimant sustained injuries to his right ankle, fibula, and head.

The claimant contends that he was in the course and scope of his employment because he responded to an emergency situation. In Texas Employers' Ins. Ass'n v. Thomas, 415 S.W.2d 18, 20 (Tex. Civ. App.-Fort Worth 1967, no writ), the court noted that the evidence supported the notion that the truck driver stopped because the road was blocked by an accident on the highway and that the claimant's help in looking for the accident victim's wallet was "a continuing part of clearing the road so he could proceed with his employer's business." In Thomas, the court held that "[a] servant does not cease to be in the course of his employment merely because he is not actually engaged in doing what is specifically prescribed to him, if in the course of his employment an emergency arises, and, without deserting his employment, he does what he thinks necessary for the purpose of advancing the work in which he is engaged in the interest of his employer." *Id.* at 20. In the instant case, the hearing officer determined that the Thomas case did not apply to facts of this case. We agree. Although an emergency situation arose, there was no evidence that the claimant was performing any action that he thought was necessary for the purpose of advancing the employer's interest.

Next, the claimant argues that the employer published a newsletter that contained letters praising drivers for assisting motorists on the side of the road; therefore, the employer had an expectation that its drivers would stop and help the public. We disagree. In Texas Workers' Compensation Commission Appeal No. 030939, decided on June 12, 2003, we declined to adopt the hearing officer's rationale that the employer expected the claimant to render assistance and provide emergency

care to a victim of a motorcycle accident as indicated by awards of heroism presented to the claimant by the employer. In that decision, the Appeals Panel affirmed the hearing officer's injury determination on other grounds citing the standard under the Thomas case because the claimant was confronted with an emergency situation and **acted accordingly to advance the business interest of the employer.** (Emphasis added.)

We have reviewed the complained-of determination. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). In this instance, the hearing officer found that the claimant had deviated from the course and scope of his employment by stopping his truck on the shoulder of the highway to help another driver who had run off the road onto the median. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record demonstrates that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that the claimant did not have disability.

We note that the hearing officer's decision contains a typographical error as to the date of the injury. We correct this typographical error by reforming the decision to read "(incorrect date of injury)," as the date of the claimant's date of injury, rather than (correct date of injury)

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.

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Veronica L. Ruberto
Appeals Judge

CONCUR:

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Chris Cowan
Appeals Judge

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Margaret L. Turner
Appeals Judge